

J. D. CARTER

IBLA 70-17

Decided July 23, 1971

Public Sales: Generally--Public Sales: Cancellation

It is proper to cancel a scheduled public sale and to reject the petition-application for classification where it is determined that inclusion of the land within a national forest is in the public interest.

Public Sales: Generally--Public Sales: Applications

An individual who files a petition-application to buy an isolated tract of land acquires no vested interest in the land by such filing, and the Secretary of the Interior may exercise his discretion as to whether to sell the land at any time prior to issuance of a patent.

IBLA 70-17 :

ES 1615

J. D. CARTER :

Public sale canceled

: Affirmed

### DECISION

J. D. Carter has appealed from a decision of the Office of Appeals and Hearings, Bureau of Land Management, affirming the decision of the manager of the New Orleans office. The manager canceled the scheduled sale of the involved isolated tract of land and withdrew the tract from the market pending its inclusion in the Ozark National Forest, as it was not in the public interest to sell lands that were to be included in a national forest.

The Office of Appeals and Hearings found that it was within the discretionary authority of the Secretary to determine whether to sell the land involved at a public sale, and that the filing of an application by the appellant did not vest any right or privilege in the appellant which precluded the Department from rejecting his application. It further held that the appellant, while showing that he might personally benefit from the acquisition of the land, had failed to show that disposal of the applied for land would be more in the public interest or serve a greater public purpose than retention of the land for national forest purposes.

In his appeal to the Director of the Bureau, appellant contends that the sale should be permitted on the ground that it is within the discretionary authority of the Secretary and that it is in the public interest. In support of his position, appellant asserts that the sale cancellation should be withdrawn in order to

keep lands adaptable to production in the private market where they can be productively used to support farming in the area, and also in order to prevent an area in the midst of pasture land, which has been improved by local owners at their own expense, from becoming waste land and a "thorn in the side of this area." He further explains that agricultural activities and farming in the area are on the increase; that where a sufficient amount of land can be put together, the raising of beef cattle and the combination of raising dairy and beef cattle can be profitable; that the land in question is landlocked and there is no road or access to it and none provided, whereas the appellant owns an adjoining 75 acre tract; and that the land in issue has been permitted by the Government to grow up and is of no value to the Government without the purchase of considerable lands in the area from private ownership.

The record shows: On August 1, 1966, Carter filed petition-application ES 1615 for classification under section 7, Taylor Grazing Act, as amended, 43 U.S.C. § 315f (1964), of the SW 1/4 NE 1/4, sec. 8, T. 11 N., R 32 W., 5th P.M., Arkansas, as proper for disposal by public sale under the Isolated Tract Act, 43 U.S.C. § 1171 (1964). By letter dated February 1, 1968, the Secretary of Agriculture recommended to the Secretary of the Interior that he issue a public land order to extend the boundaries of the Ozark National Forest in Arkansas to include some 12,175 acres in the Lee Creek area. The letter mentioned that the National Forest Reservation Commission in August 1964 approved the Lee Creek area as a national forest unit and that land purchases would be undertaken under provisions of the Weeks Act of March 1, 1911, as amended, 16 U.S.C. §§ 513-19 (1964). The letter further stated that some 270 acres in key tracts had already been acquired for national forest purposes and that purchase programs would continue to be pursued as fast as availability of funds permitted. This request for a public land order is now pending in the Bureau of Land Management. The land sought to be purchased by appellant is included in the 12,175 acres mentioned in the letter from the Secretary of Agriculture.

As the appellant recognizes, the public sale law is permissive and the determination whether the land here involved shall be sold at a public sale is within the discretionary authority of the Secretary of the Interior. The proposal to extend the boundaries of the Ozark National Forest is in the public interest, and such public interest overrides any factors asserted by appellant as justifying the proposed sale of land to a private individual. Again, as was the case in the decision below, appellant has not been able to show that sale to him of the applied for land would be

more in the public interest or serve a greater public purpose than retention of the land for national forest purposes. Although the petition-application of appellant was filed in 1966, at a time before the Secretary of Agriculture had requested that that lands here in issue be included in a national forest, nevertheless the appellant acquired no vested rights with respect to the land by filing his petition-application. The Secretary of the Interior, acting under the Isolated Tract Act may exercise his discretion as to whether or not to sell an isolated tract at any time until a patent has been issued. 43 CFR 2711.7 (1971); Lewis v. Udall, 374 F.2d 180 (9th Cir. 1967); Willcoxson v. United States, 313 F.2d 884 (D.C. Cir. 1963). See Jack H. Stockstill et ux and Vernon C. Mager et ux, 1 IBLA 278 (1971). 1/ In these circumstances, we agree with the decision below that the manager of the New Orleans office properly canceled the scheduled sale of the land involved and withdrew the tract from the market.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision appealed from is affirmed.

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Anne Poindexter Lewis, Member

We concur:

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Francis Mayhue, Member

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Martin Ritvo, Member

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1/ Cf. Crowfoot Lumber, Inc., et al., Sacramento 061942 etc. (August 30, 1965), where a public sale application was rejected and a petition application denied when it was determined that the lands applied for were not proper for acquisition under the public sale act. The reason was that they were found to be most suitable for watershed, wildlife, and hunting purposes, with some small area suitable for timber production, and the lands were considered valuable for exchange purposes.

